IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4399 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMESHBHAI MAFATLAL MAKWANA

Appearance:

1. Special Civil Application No. 4399 of 2001

MR ASHISH M DAGLI for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/03/2002

ORAL JUDGEMENT

#. Heard Mr.A.M.Dagali, learned advocate appearing on behalf of the petitioner and Mr.B.A.Vaishnav, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference No.58/ 1997 dated 1st November, 2000, wherein the Industrial Tribunal has directed the petitioner Corporation to give compassionate appointment to one Shri Rameshbhai Mafatlal Makwana in Class III and / or IV cadre within period of one month from the date of said award. This Court has issued RULE and ad-interim relief in terms of para-8[B] has been granted on 9th July, 2001. Learned advocate Mr.Dagali appearing on behalf of the petitioner Corporation has challenged this award on the ground that there is delay in rasing the industrial dispute by the respondent. Learned advocate Mr.Dagali has also submitted that direction issued by the tribunal is contrary to the administrative circular issued by the petitioner Corporation from time to time granting compassionate appointment on certain conditions in pursuance of the settlement arrived at between the Union and the Corporation dated 21st December, 1989 [Item No.30]. Mr.Dagali, learned advocate further submitted that income ceiling criteria though it is specifically mentioned in the settlement, same has to be taken into consideration because the sole object for giving compassionate appointment is to meet with the hardships of the family immediately on account of the death of any employee. Therefore, income is necessary criteria to be looked into while considering the application for compassionate appointment and hence, the administrative circular issued by the petitioner Corporation must have to be taken into account and rightly considered by the petitioner Corporation while rejecting the application of the respondent. Mr.Dagali, learned advocate has also submitted that while considering the application of the respondent, other recruitment Rules are also required to be followed, in that case, as to why the administrative Circular so far it relates to the compassionate appointment should not be followed. Mr.Dagali, learned advocate has also submitted that the provisions made in the settlement to the effect that as far as vacancy available, the legal heir of the deceased employee will be absorbed or will be given appointment accordingly or to make some efforts to absorb the dependent in service. Therefore, direction which has been issued by the tribunal to appoint the respondent, is contrary to the provisions of the settlement. No other contention save and except referred above, has been raised by learned advocate Mr.Dagali on behalf of the petitioner Corporation.

#. Learned advocate Mr.Biren Vaishnav appearing on behalf of the respondent has submitted that written

statement has been submitted by the petitioner before the tribunal vide Exh.9 wherein, no such contention has been raised by the petitioner Corporation in respect of the delay aspect. Learned advocate Mr.Vaishnav has also submitted that the settlement dated 21st December, 1989 is binding settlement arrived at between the Union and the Corporation under Section 12[3] of the Industrial Disputes Act and any instructions or Circular/s or administrative guidelines contrary to the settlement cannot be implemented or permitted to be implemented by the petitioner Corporation. Therefore, Mr.Vaishnav submits that the application filed by the respondent has been rejected only on the basis of the administrative instructions which is contrary to the settlement and taking into account the income criteria that mother of the respondent is working in Palanpur Civil Hospital and therefore, application of the respondent has been rejected for compassionate appointment. Mr.Vaishnav, learned advocate has also submitted that according to the settlement, the respondent is entitled to benefit of compassionate appointment irrespective of the income criteria and that application has been wrongly rejected by the petitioner Corporation contrary to the provisions of the settlement. Therefore, the tribunal has rightly examined the issue and passed appropriate order which is legal and valid and no error has been committed by the tribunal which in any way requires any interference by this Court. Learned advocate Mr.Vaishnav has also submitted that there is one decision of the tribunal in respect of same issue given by the Industrial Tribunal which is referred in para-10 of the award wherein identical issue was examined and granted benefit of compassionate appointment. Mr.Vaishnav, learned advocate has relied upon decision of this Court reported in case of GUJARAT STATE ROAD TRANSPORT CORPORATION LTD V. reported in 1995 [2] GLH 854 and relying on this judgment, has submitted that identical issue has been examined by this Court in a case where the tribunal has granted compassionate appointment and this Court has upheld the relief granted by the tribunal. Therefore, Mr.Vaishnav, learned advocate submits that no error has been committed by the tribunal which in any calls for any interference of this Court.

#. I have considered submissions of the learned advocates for the parties. It is true that in respect of the contention as to delay which is referred by the tribunal in para-4, no such contention has been raised by the petitioner in the written statement filed before the tribunal vide Exh.9 and thus, no contention in respect of delay was raised by the petitioner Corporation before the

tribunal. However, it is pertinent to note that the deceased employee expired on 10th August, 1989 and the respondent has submitted application on 30th November, 1989, meaning thereby, within period of three months the respondent has applied for compassionate appointment to the petitioner Corporation. Therefore, it transpires that there was no question of any delay in putting the claim for compassionate appointment from the petitioner Corporation by the respondent. Thereafter, there was some transaction in between 1989 - 1993 and ultimately the petitioner Corporation has given answer to the respondent on 17th January, 1993 and rejected request made by the respondent. Therefore, it becomes clear that for the period from 1989 - 1993, the matter was pending with the petitioner Corporation and thereafter, industrial dispute was raised through Union. Therefore, even otherwise there was no delay in raising the industrial dispute. However, it is noted that this contention undisputedly not raised by the petitioner Corporation and there is no need to examine this contention in detail.

#. Learned advocate Mr.Dagali on behalf of the petitioner has raised contention that administrative instructions issued by the petitioner Corporation while keeping in mind the object of compassionate appointment with a view to see that immediately in case of death, hardships of family can be minimized and therefore, provisions for compassionate appointment are meant for the purpose. If any member of the family is earning and having income in family, then there is no purpose to give any compassionate appointment and therefore, administrative instructions issued by the petitioner Corporation wherein ceiling of income has been prescribed by the petitioner corporation has to be read with object of the settlement dated 21st December, 1989 [Item No.30]. Therefore, administrative instruction is not contrary to the settlement.

#. This Court has considered submissions of learned advocate Mr.Dagali. Looking to the clear language of Item No.30, there is no mention or no condition is incorporated that in case when any employee has died during the course of employment or declared unfit, one family member or heir of the deceased is required to be given compassionate appointment so far vacancy is available with the Corporation in Class III / IV category or efforts will have to be made by the petitioner Corporation to absorb such person. Thus, the provision is very clear and there is no such condition incorporated by the Corporation and if any administrative instruction

or direction by way of GSO or by way of any circular imposing certain conditions not in terms of the settlement, nullify the object of the settlement or nullify the provisions of the settlement or nullify the effect of the settlement which is contrary to the settlement and therefore, said instructions and / or administrative guidelines cannot be given legal effect because the settlement under Section 12[3] of the Industrial Disputes Act, 1947, is like an award and the same is binding to the petitioner and any breach thereof amounts to criminal offence under Section 29 of the Industrial Disputes Act, 1947. Therefore, claim which has been made by the respondent workman under the provisions of the settlement cannot be rejected on the ground of having income in the family. This is not proper ground or ground provided under the settlement and therefore, rejection of claim of the respondent by the petitioner Corporation is illegal.The tribunal has considered this aspect in para-8 and came to conclusion that while arriving at settlement with the consent of the Corporation and Union and therefore, any change if it is to be brought into effect, another settlement is required to be arrived but by virtue of administrative circular, the Corporation cannot impose any condition contrary to the settlement which curtail the right as provided under the settlement. It is also observed by the Tribunal that while issuing this administrative instructions or Circular prescribing ceiling of income of the family, the Union was required to be consulted and the Union ought to have been taken into confidence but for the purpose, there was no such evidence produced by the petitioner Corporation. The tribunal has also observed that settlement having legal effect and such settlement cannot be violated by the Corporation by issuing such administrative instruction and therefore, application of the respondent cannot be rejected based on such administrative circulars. Therefore, ultimately the tribunal has considered that the demand raised by the respondent is legal and valid, and requires to be accepted. Therefore, the tribunal has rightly passed the award. The contention raised by learned advocate Mr.Dagali that at the most the tribunal can direct the petitioner Corporation to reconsider the matter for giving compassionate appointment but the Tribunal cannot direct the petitioner Corporation to appoint the dependent of the deceased workman. This contention cannot be accepted by this Court on the ground that from 1989 upto 2002, the respondent remained without any job. Now after more than twelve years, if the tribunal is directed by this Court to reconsider the matter, it can presume that another number of years will pass on for

arriving a fresh decision and therefore, ultimately the purpose for compassionate appointment as per the settlement, will be frustrated. Therefore, according to my opinion, the tribunal has rightly passed the award granting compassionate appointment in favour of the respondent workman.

#. Similar aspect and the contentions as raised by the Corporation before this Court, has been considered in a decision of GUJARAT S.T. CORPORATION V. DINESHBHAI M. PANCHAL by this Court which is reported in 1995 [2] GLH 854. The relevant observations made in para-5, 6, 7, 15, 16 and 17 are much relevant with the facts of the present case and therefore, same are referred as under :-

"5. By referring to and relying upon the aforesaid decisions, Mr.Rathod, learned advocate for the respondent submitted that certain facts are admitted facts in the case for the respondent to seek an employment on compassionate grounds. The tribunal may have observed about any abstract proposition of law but decided the dispute and /or reference on certain facts which cannot be assailed of by the petitioner and if those facts are appreciated in proper and right perspective, there is nothing left for this Court to interfere with the order of the Tribunal. He has submitted that there are certain Settlements besides a policy adopted by the petitioner - Corporation to provide employment to the dependent of a retired employee and / or an employee who died in harness. In the instant case the employee Manilal Nanjibhai Panchal died while in service, leaving behind him his widow, three sons and a daughter. According to him, the two sons had separated from the deceased employee during the lift of their father, i.e. the deceased employee. At the time of demise the family of the deceased consisted of his widow, unemployed son and a daughter. Before the Tribunal the dependent unemployed son of the deceased employee had deposed that he was living with his widow mother and his sister and that his brother had separated from the family long back and it was stated that both the said bothers had been jointly contributing Rs.200/- per month. Besides such income there is no other provision and source and under these circumstances consideration of appointment on compassionate grounds was a must. He has demonstrated before Court by pointing out materials on record that

the evidence of the respondent remained unchallenged and there is no suggestion even at the time of cross examination of the respondent that the respondent had other income or that the family of the deceased employee had other sources for survival.

6. This Court has patiently considered the submissions made on behalf of the respective parties. With great anxiety this Court has considered the material on record in depth and details. In order to avoid any necessary controversy this Court finds certain admitted facts which would be very much pertinent to observe. The employee concerned, viz. Manilal Nanjibhai Panchal died on 28-3-1987. As per the evidence adduced, two sons of Manilal Panchal had been living separately even during the life time of said Manilal Panchal. The meagre contribution by the brothers to the family, comprising of widow of Manilal Panchal, unemployed son and the daughter, having no other source of income is also not in dispute. The evidence adduced by the respondent herein goes unchallenged. There is no cross examination about the availability of funds and against the pitiable financial condition of the family left the deceased.

7. Under this background, there is an obligation for appointment on compassionate grounds. The settlement as referred to by the petitioner Corporation refers to paragraph 3 wherein it is provided -

One member of the family of the retired employee of the Corporation will be permitted to apply directly in S.T. subject to the condition that there is no other earning member in the family ...."

Similarly, in para-4 of the Settlement it has been provided as under :-

"Similarly, if an employee of the Corporation dies or becomes permanently disabled while in service and there is no other earning member in the family, one member of his/ her family can directly apply for a suitable post in S.T., when names for such vacancy are called for from the Employment Exchange. ..."

Admittedly, there is policy of the Corporation to provide employment on compassionate grounds. The policy has been liberalised from time to time.

15. By looking at the principles of law and the ratio arrived at in the aforesaid reported decisions it is not in doubt that in appropriate cases where there is hardships and the rules do not prohibit, there may be appointment on compassionate grounds. The aforesaid decisions referred to and relied upon by the petitioner and the respondent, only lead to the conclusion that each case has to be considered on its own merits. Any observations by the tribunal contrary to proposition of law and / or contrary to the observations made by the Apex Court of the Country and high Courts, does not change the position of law. The decision of the Tribunal so far as its conclusions is concerned, may be considered, but if there is no other reason contrary to law, it is not certainly binding and it becomes reckoning force.

16. Regard being had to the materials on record and the circumstances of the case, it transpires that after the demise of Manilal Nanjibhai Panchal the family of the deceased is under duress and the financial condition of the family is pitiable and that there should hardly bed any delay in considering the appointment of the applicant on compassionate grounds. The facts are simple and clear and the conclusion arrived at by the Tribunal is most justiciable. It is also fairly conceded by Mr.Rathod, learned advocate for the respondent that there cannot be any retrospective employment nor the question of any compensation arises from 1988 as observed by the Tribunal. Having anxiously gone through the decision of the Tribunal, this Court approves the decision of the Tribunal so far as the giving of the employment within 30 days of the publication of the award of the Tribunal is concerned. But the question of payment of any compensation or for any retrospective date for reckoning the services from 1988 does not arise.

17. In the result, this petition fails to the extent that the order of the Industrial Tribunal so far as directs that employment be offered to Dinesh Manilal Panchal in either Grade III or Grade IV according to his educational

qualification in the S.T. Corporation within 30 days of the publication of the award is not disturbed and is confirmed. However, so far as the direction for payment of Rs.5,000/- as special compensation having delayed in implementing the settlement to the claimant is concerned, the same is not sustainable and that direction is quashed. Considering the facts and circumstances of the case, there will a special costs of Rs.3,500/- payable by the petitioner Corporation to the claimant for this petition. The order of costs made by the Tribunal in the Reference is maintainable. Rule is discharged subject to aforesaid observations."

#. I have considered the observations made by this Court in above referred case and considering the facts and circumstances of the present case, wherein only contention which has been raised by the petitioner Corporation that the mother is working in Civil Hospital and thereby having income in the family but this aspect cannot be taken into account while scrutinizing the application as per the settlement dated 21st December, 1989 [Item No.30] and therefore, the tribunal has rightly observed and considered the effect of the settlement and passed appropriate order which is legal and valid. The tribunal has not committed any jurisdictional error nor committed any procedural irregularity which in any way calls for interference of this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but

with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

##. In view of above discussion, there is no substance in the petition and the same is required to be rejected. Therefore, this petition is rejected accordingly. Rule discharged. No order as to costs. Direct Service is permitted to respondent.

Date : 15-3-2002 [H.K.Rathod, J.]

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